

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC(OAC) No.1719 of 2017

In the matter of an application under Section 19 of the
Administrative Tribunal's Act, 1985.

.....

Abinash Mallick

....

Petitioner

-versus-

State of Odisha & Ors.

....

Opposite Parties

For Petitioner : M/s. R. Acharya(Advocate)

For Opp. Parties : Mr. A.P. Das
Additional Standing Counsel

PRESENT:

THE HON'BLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 26.08.2022 and Date of Judgment:21.10.2022

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.
2. Heard Mr. Ramnath Acharya, learned counsel for the Petitioners and Mr. A.P. Das, learned ASC appearing for the Opp. Parties.
3. The present writ Petition has been filed with the following prayer:-

*"In view of the facts mentioned above the applicant prays for
the following relief:-*

- i) The order dated 8.4.2016 of the Government under Annexure-11 may kindly be quashed so far as the applicant is concerned.*
- ii) The order dated 5.5.2016 issued by the Executive Engineer, Mahanadi Barrage Division under Annexure-12 be quashed.*
- iii) The respondent Nos.1 & 2 be directed to consider the case of the applicant for appointment under R.A. Scheme within a stipulated period.*
- iv) And/or may kindly also grant any other relief and/or reliefs which your Lordship think deem fit and proper for the benefit of the applicant."*

4. It is submitted that on the death of the Petitioner's father on 03.03.2010 while working as Store Choukidar at Mahanadi Barrage Division, Cuttack, the mother of the Petitioner made an application for her appointment under the provision of Rehabilitation Assistance Scheme on 23.09.2010.

5. It is submitted that on such death of the deceased Govt. employee the wife of the deceased employee though filed the application before the Superintending Engineer, Drainage Circle, Gandarpur for her appointment under Rehabilitation Assistance Scheme, but she was not willing to work due to continuous illness and filed an application before the Authority to wait till the present Petitioner attains the age of 18 years for his appointment under the Rehabilitation Assistance Scheme.

6. It is also submitted that the Petitioner on attaining the age of 18 years of age made an application before the Superintending Engineer, Drainage Circle, Cuttack though the Asst. Executive Engineer for his appointment under Rehabilitation Assistance Scheme enclosing various documents as desired by the Authority under Annexure-4 on 18.04.2013.

7. It is submitted that O.P. No. 4 vide letter dt.03.07.2013 under Annexure-5 forwarded the required information/materials for further action to the Superintending Engineer, Drainage Circle, Cuttack. The Superintending Engineer, Drainage Circle, Cuttack after receiving the application of the

Petitioner along with connected documents forwarded the same to the O.P. No. 2 for consideration of appointment of the Petitioner as a Peon under OCS (R.A.) Scheme vide letter dtd.05.08.2014 under Annexure-6.

8. It is submitted that subsequently on being requested by O.P. No. 3-Collector, Kendrapara also issued the distress certificate vide Annexure-8 and on receipt of the same, O.P. NO. 4 forwarded the proposal to O.P. No. 2 vide Annexure-9.

9. It is also submitted that O.P. No. 2 thereafter forwarded the matter to O.P. No. 1 for consideration of the Petitioner's claim vide letter dtd.08.05.2015 under annexure-10. But after keeping the matter pending, O.P. No. 1 rejected the claim vide his order dtd.08.04.2016 under Annexure-11 and the said fact was intimated to the Petitioner vide Annexure-12.

10. It is also submitted that the grounds on which the claim of the Petitioner was rejected is no more res integra in view of the decision of this Court reported in the case of *Ajit Kumar Barik Vs. State of Odisha & Ors. (2018 (II) OLR P-10)*.

11. It is submitted that in the said reported decision it has been held that "Family Members" as defined under Rules 2(b) of the OCS (R.A.) Rules, 1990 are eligible to make their application and there is no hard and first rule that only wife/husband of the deceased Govt. employee is eligible to make such application. It is also submitted that since the Petitioner complied with all the requirements and wife of the deceased employee is unfit for the Govt. job due to her illness, the claim of the Petitioner should not have been rejected on the ground indicated in the impugned communication at Annexure-11. But in spite of submission of all the documents as desired by the concerned Authority, O.P. No. 1 vide letter dtd.08.04.2016 rejected the application of the Petitioner for appointment under Rehabilitation Scheme under Annexure-11.

O.P. No. 4 vide letter dtd.05.05.2016 under Annexure-12 intimated the rejection order to the Petitioner.

12. It is submitted that in view of the reported decision of this Court as cited supra, the rejection of the Petitioner's claim on the ground indicated in Annexure-11 is illegal and needs interference of this Court.

13. Mr. A.P. Das, learned ASC on the other hand submitted that since the wife of the deceased employee was very much available, the claim of the Petitioner being the 5th legal heir of the deceased employee is not entertainable and accordingly no illegality has been committed by the O.P. No. 1 in rejecting the same.

14. Heard learned counsel appearing for the Parties. Perused the materials available on record. This Court after going through the same finds that the grounds on which the claim of the Petitioner has been rejected is not sustainable in view of the reported decision of this Court as cited (supra). This Court also finds that the application submitted by the Petitioner was not only entertained, but also was duly processed and recommended to the O.P. No. 1 for appropriate action. But after keeping the matter pending, the same was rejected vide the impugned order at Annexure-11.

15. In view of such steps taken in the matter, the claim of the Petitioner should not have been rejected. In any view of the matter, this Court finds that the Petitioner's claim has been illegally rejected and accordingly this Court is pleased to quash the rejection order dtd.08.04.2016 available at Annexure-11 so far as it relates to the Petitioner as well as the consequential order dtd.05.05.2016 at Annexure-12. While quashing both the orders, this Court directs the O.P. No. 1 to take appropriate step in the matter and take a fresh decision in accordance with the Rule prevalent at the time of death of the deceased employee taking into account the decisions of the Hon'ble Apex

Court in the case of *Malayananda Sethi Vs. State of Odisha*. Such a fresh decision shall be taken within a period of two (2) months from the date of receipt of this order. If on such recommendation Petitioner is found eligible, then necessary order of appointment be also issued within the aforesaid time period.

16. The writ Petition is disposed of with the aforesaid observation and direction.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 21st of October, 2022/Sneha

